

**321—29.11(231B) Waiver of the level of care requirements.****29.11(1)** Criteria for level of care waiver.

*a.* When it becomes apparent to the EGH staff that a tenant will need licensed nursing activities or hospice care and the tenant or tenant's legal representative does not want or approve of a transfer from the EGH, a request for waiver of level of care shall be submitted to DIA by the tenant, tenant's legal representative, homeowner, operator or on-site manager.

*b.* DIA may grant a waiver if an investigation establishes by clear and convincing evidence that the following criteria have been met:

(1) It is the informed choice of the tenant or tenant's legal representative to remain in the home; and

(2) The operator is able to provide appropriate care to the tenant in addition to adequate care of the other tenants, or that additional staff is available or can be obtained to meet the tenant's care needs; and

(3) The waiver shall not jeopardize the care, health, safety or welfare of the tenant or others; and

(4) The tenant does not meet the criteria for exclusion set forth in 29.7(2).

**29.11(2)** Level of care waivers. Requests for waiver of the level of care requirements for a tenant of an EGH shall be submitted on a form and in a manner designated by DIA and in accordance with this rule. DIA may grant a waiver for an individual tenant on a time-limited basis.

**29.11(3)** DIA shall:

*a.* Review and respond in writing to waiver requests within two working days of receipt of necessary documentation.

*b.* Monitor regularly, for the duration of the waiver, the tenant's medical and functional information for continued appropriateness of the waiver.

**29.11(4)** The waiver applicant shall notify DIA within five calendar days of any changes in the condition of the tenant as provided in the approved waiver request.

**29.11(5)** A tenant who is subject to an involuntary transfer shall have the right to an internal appeal of the transfer before the transfer occurs.